

CAPITAL CASE
22 –

IN THE SUPREME COURT OF THE UNITED STATES

October Term 2022

Steven Vernon Bixby,

Applicant-Petitioner

v.

Bryan Stirling, Commissioner, South Carolina Department of Corrections; and
Lydell Chestnut, Deputy Warden, Broad River Correctional Institution,

Respondents

Application for an Extension of Time
Within Which to File a Petition for Writ of Certiorari
to the United States Court of Appeals for the Fourth Circuit

APPLICATION TO THE HONORABLE CHIEF JUSTICE
JOHN ROBERTS AS CIRCUIT JUSTICE

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APPLICATION FOR AN EXTENSION OF TIME

Pursuant to Rule 13.5 of the Rules of the Court, Applicant Steven Vernon Bixby requests a 60-day extension of his time to file a petition for a writ of certiorari, up to and including January 30, 2023.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The order and judgment for which review is sought was issued by the United States Court of Appeals for the Fourth Circuit on April 29, 2022 in *Bixby v. Stirling*, No. 21-5. (Exhibit 1). The Fourth Circuit denied Applicant's Petition for Rehearing on August 31, 2022 (Exhibit 2).

JURISDICTION

This Court will have jurisdiction over any timely filed petition for certiorari pursuant to 28 U.S.C. §1254(1). Under Rules 13.1, 13.3, and 30.1 of the Rules of this Court, a petition for writ of certiorari is due to be filed on or before November 29, 2022. In accordance with Rule 13.5, this application is being filed more than ten days in advance of the filing date for the petition for a writ of certiorari.

REASONS JUSTIFYING AN EXTENSION OF TIME

Applicant, a death-sentenced prisoner in South Carolina, respectfully requests a 60-day extension of time within which to file a petition for writ of certiorari seeking review of the decision of the United States Court of Appeals for the Fourth Circuit, up to and including January 30, 2023.

An extension of time is necessary due to undersigned counsel's pressing professional, family, and civic obligations. Undersigned counsel are federal public defenders in the Capital Habeas Unit for the Fourth Circuit and have had numerous obligations in other capital habeas corpus cases in the time since the Fourth Circuit denied Applicant's appeal. These obligations include *Dickerson v. Stirling*, No. 22-00108 (D.S.C.), a capital habeas matter in which the undersigned have in the last two months drafted and filed a host of pleadings, including an Amended Petition, Motion for Stay pending the exhaustion of state remedies, a state post-conviction (PCR) petition, and pleadings responsive to the State's opposition to each. Both counsel also represent Applicant Bixby in the Fourth Circuit in companion proceedings related to the District Court's denial of a Rule 60(b) motion; Applicant's opening brief is due on November 23, 2022. *See Bixby v. Stirling*, No. 22-4 (Fourth Circuit). Counsel Swift has also been heavily involved in the drafting of a Rule 59(e) motion in the case of *Bryant v. Stirling*, No. 16-01423 (D.S.C.), which is due on November 19, 2022.

In addition, Counsel Swift has had family obligations, including the illness of her children and a death in her family, which have kept her from work responsibilities for the last week. Counsel Weiss has had to report for jury duty in Durham County, North Carolina each day since November 1, 2022. Weiss was finally released on November 9, 2023, when he was not selected to serve as a juror.

The Court's interest in judicial efficiency and streamlined proceedings also weighs in favor of granting an extension. As noted above, Mr. Bixby has appealed the District Court's denial of a Rule 60(b) motion that was filed in the same district court habeas case from which this appeal arose. Mr. Bixby's brief on the Rule 60(b) matter is due to the Fourth Circuit on November 23, 2022. Although these two appeals are proceeding on separate tracks, they arise from the same case and the same core of habeas claims and facts. Granting an extension will allow additional time for the Rule 60(b) matter to develop in the Fourth Circuit, and potentially to be considered by this Court contemporaneously with the present certiorari request.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests this Court grant an extension of 60 days, up to and including January 30, 2023, within which to file a petition for a writ of certiorari in this case.

Respectfully submitted,



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